

Message Text

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PAGE 01 STATE 051166

62

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APPROVED BY IO/UNP:MROTHENBERG

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TO AMEMBASSY BRUSSELS

INFO USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 051166

E.O. 11652: GDS

TAGS: PINS, UNGA

SUBJECT: SIGNATURE OF CONVENTION ON PROTECTION OF DIPLOMATS

REF: BRUSSELS 1209

1. IT APPEARS THAT VRANKEN IS UNDER MISCONCEPTION CONCERNING RELATIONSHIP OF RESOLUTION AND CONVENTION.
2. REGARDING POINTS REPORTED PARA 2 REFTEL, CONVENTION DOES NOT REPEAT NOT REFER TO RESOLUTION AND RESOLUTION DOES NOT REPEAT NOT STATE THAT IT IS PART OF CONVENTION.
3. OPERATIVE PARAS 3, 4 AND 6 OF RESOLUTION REFER TO "THE ANNEXED CONVENTION." REGARDING THE LEGAL EFFECT OF THE CONVENTION'S ANNEXURE TO THE RESOLUTION, ADVISE VRANKEN OF THE FOLLOWING STATEMENT OF STEEL (UK REP) IN THE UN SIXTH (LEGAL) COMMITTEE: "FOLLOWING THE USUAL
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PAGE 02 STATE 051166

PROCEDURE, THE GENERAL ASSEMBLY HAS ADOPTED THE CONVENTION

BY MEANS OF A RESOLUTION. THE CONVENTION IS ANNEXED TO THAT RESOLUTION AND THE RESOLUTION CONFIRMS THAT IT AND THE CONVENTION ARE RELATED INSTRUMENTS."

4. IN DEPARTMENT'S VIEW, STEEL'S COMMENTS AMPLY ILLUSTRATE THAT CONVENTIONS DRAFTED IN UN SYSTEM ARE CUSTOMARILY ADOPTED BY AN UNGA RESOLUTION AND ARE ANNEXED TO SUCH RESOLUTION. THAT THIS RESOLUTION SPECIFICALLY REFERS TO

THE "ANNEXED CONVENTION" DOES NOT GIVE THE RESOLUTION ANY LEGAL STATUS. THIS RESOLUTION, AS OTHERS OF THE UNGA WHEREBY CONVENTIONS ARE ADOPTED, IS A MECHANISM WHEREBY THE UNGA DECLARES COMPLETION OF THE DRAFTING OF A TREATY, PURPOSES OF TREATY, OPENING OF TREATY FOR SIGNATURE AND/OR INVITATION TO SIGNATURE.

5. OPERATIVE PARA 6 ALSO STATES THAT UNGA DECIDES THAT THE RESOLUTION, "WHOSE PROVISIONS ARE RELATED TO THE ANNEXED CONVENTION, SHALL ALWAYS BE PUBLISHED TOGETHER WITH IT." CLEAR RECORD WAS ESTABLISHED IN SIXTH COMMITTEE THAT THIS MEANT THAT WHENEVER UN PUBLISHES THE CONVENTION IT WILL ALSO PUBLISH THE RESOLUTION WITH IT. GOB REP, VAN BRUSSELEN, AMONG OTHERS, VOICED THIS VIEW IN COMMITTEE. THUS GOB UNDER NO OBLIGATION TO ADOPT, APPROVE OR PUBLISH RESOLUTION ALONG WITH CONVENTION WHEN PRESENTING LATTER TO PARLIAMENT.

6. OPERATIVE PARA 4 OF THE RESOLUTION DOES LITTLE MORE THAN STATE EXPLICITLY WHAT WOULD BE IMPLICIT IN ANY CONVENTION DRAFTED IN UN SYSTEM. WHILE IT STATES THAT THE CONVENTION CANNOT "PREJUDICE THE EXERCISE OF THE LEGITIMATE RIGHT TO SELF-DETERMINATION AND INDEPENDENCE" (AND IT IS CLEAR THAT THIS LANGUAGE WAS INCLUDED FOR THE BENEFIT OF LIBERATION MOVEMENTS), THE EXERCISE OF THAT RIGHT MUST BE "IN ACCORDANCE WITH THE PURPOSES AND PRINCIPLES OF THE CHARTER." THUS EVEN IF LEGAL STATUS COULD BE GIVEN RESOLUTION, IT WOULD ONLY MEAN THAT (WITH REFERENCE TO OPERATIVE PARA 4) IT WAS "RECOGNIZED" THAT NOTHING IN THE CONVENTION COULD BE INCONSISTENT WITH THE UN CHARTER.

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PAGE 03 STATE 051166

7. CONSEQUENTLY, DEPARTMENT WOULD ARGUE THAT: (A) RESOLUTION IS NOT INTEGRAL PART OF CONVENTION; (B) GOB NEED NOT PRESENT RESOLUTION TOGETHER WITH CONVENTION WHEN SEEKING PARLIAMENTARY APPROVAL; (C) SUBSTANCE OF RESOLUTION DOES NOT HAVE LEGAL AFFECT ON SUBSTANCE OF CONVENTION.

8. OBVIOUSLY, GOB MUST DETERMINE IN LIGHT OF ITS OWN

PRACTICE WHETHER OR NOT TO RAISE RESOLUTION FORMALLY WITH ITS PARLIAMENT. YOU MAY INFORM VRANKEN THAT DEPARTMENT DOES NOT INTEND TO ATTACH RESOLUTION TO CONVENTION WHEN IT IS SUBMITTED TO SENATE, THOUGH DEPARTMENT WILL UNDOUBTEDLY INFORM SENATE LEADERSHIP OF RESOLUTION AND DEPARTMENT'S LEGAL CONSTRUCTION OF RESOLUTION.

9. YOU SHOULD ALSO ADVISE VRANKEN THAT THIS RESOLUTION WAS A COMPROMISE AND THAT THESE ISSUES WERE CONSIDERED

BY USG AND OTHER WEO DELS IN THE SIXTH COMMITTEE WHEN THEY DECIDED TO ACCEPT THE COMPROMISE RESOLUTION. IF, AT THAT TIME, USG HAD HAD THE DOUBTS BRUSSELS NOW RAISES CONCERNING LEGAL STATUS AND EFFECT OF RESOLUTION, WE WOULD NOT HAVE APPROVED THE COMPROMISE. FOR WEOS NOW TO REJECT CONVENTION (OR REFUSE TO SIGN FOR REASONS THAT VRANKEN HAS INDICATED) WOULD UNDERCUT OUR INTERPRETATION OF THE UNGA ACTION. ONLY VIABLE OPTION NOW IS TO PROCEED TO SIGNATURE AND RATIFICATION. KISSINGER

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